

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: PETER IRMA AUGUST BARRI,
JEAN LOUIS CALVIGNAC, KENT HAROLD HASELHORST,
MARCO C. HEDDES, JOSEPH FRANKLIN LOGAN,
FABRICE JEAN VERPLANKEN and MIROSLAV VRANA

Application No. 09/990,840

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on November 7, 2006. A review of the application has revealed that the application is not ready for review and consideration. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

An Appeal Brief was filed on January 23, 2006, under the rules set forth in 37 CFR § 41.37(c). However, a review of the Appeal Brief reveals that it is not in compliance with the new rules under 37 CFR § 41.37(c), which state:

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (c)(1)(x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c)(1)(iv) and (c)(1)(vii) through (c)(1)(x) of this section.

A review of the appellant's Appeal Brief reveals that the following

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Application No. 09/990,840

required appendix is missing:

37 CFR § 41.37(c)(1)(x), which is identified in the rules as:

(x) **Related proceedings appendix**. An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of this section.

Section 37 CFR § 41.37(c) further states:

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for non-compliance and given a time period within which to file an amended brief. If appellant does not file an amended brief within the set time period, or files an amended brief which does not overcome all the reasons for non-compliance stated in the notification, the appeal will stand dismissed.

It is required that a supplemental Appeal Brief be submitted that is in compliance with 37 CFR § 41.37(c).

EXAMINER'S ANSWER

On April 21, 2006, an Examiner's Answer was mailed in response to the Appeal Brief received January 23, 2006. A review of the Examiner's Answer reveals that it is not in compliance with the Manual of Patent Examining Procedure (MPEP). In the "Evidence Relied Upon" (section 8), the examiner does not list the prior art relied upon for the grounds of rejection. This section should identify the prior art relied upon to reject the claims on appeal. In accordance with MPEP § 1207.02, the "Evidence Relied Upon" (section 8) should include:

(8) Evidence Relied Upon

A listing of evidence relied on (e.g., patents, publications, admitted prior art), and in the case of non-patent references, the relevant page or pages.

Correction of the record is required.

Application No. 09/990,840

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner:

- 1) to hold the Appeal Brief filed January 23, 2006, incomplete;
- 2) to notify appellants to file a supplemental Appeal Brief in compliance with 37 CFR § 41.37;
- 3) to vacate the Examiner's Answer mailed April 21, 2006;
- 4) to issue a revised Examiner's Answer in compliance with MPEP 1207.02 and to acknowledge and consider any supplemental Appeal Brief; and
- 5) for such further action as may be appropriate.

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